

1 UNITED STATES DISTRICT COURT
 2 EASTERN DISTRICT OF NEW YORK
 3 -----X
 4 ROBERT TORTORA,
 5 PLAINTIFF,
 6 -against- Case No.:
 7 15-CV-3717
 8 (MKB)(VMS)
 9
 10 CITY OF NEW YORK, POLICE DETECTIVE MALCOLM
 11 DANZIGER, POLICE OFFICER TIMOTHY DONNELLY,
 12 POLICE OFFICER JOHN/JANE DOE(S) #'S 1-3,
 13
 14 DEFENDANTS.
 15 -----X
 16 DATE: October 27, 2017
 17 TIME: 10:40 A.M.
 18
 19 DEPOSITION of the Defendant,
 20 CITY OF NEW YORK, by a witness,
 21 RHIANNON LA TOUR, ESQ., taken by the
 22 respective parties, pursuant to a Court
 23 Order and to the Federal Rules of Civil
 24 Procedure, held at the offices of Diamond
 25 Reporting, Inc., 16 Court Street, Suite 907,
 Brooklyn, New York 11241, before, Germila
 Donald, a Notary Public of the State of New
 York.

1 FEDERAL STIPULATIONS
 2
 3 IT IS HEREBY STIPULATED AND AGREED by
 4 and between the counsel for the respective
 5 parties herein that the sealing, filing and
 6 certification of the within deposition be
 7 waived; that the original of the deposition
 8 may be signed and sworn to by the witness
 9 before anyone authorized to administer an
 10 oath, with the same effect as if signed
 11 before a Judge of the Court; that an
 12 unsigned copy of the deposition may be used
 13 with the same force and effect as if signed
 14 by the witness, 30 days after service of the
 15 original & 1 copy of same upon counsel for
 16 the witness.
 17
 18 IT IS FURTHER STIPULATED AND AGREED
 19 that all objections except as to form, are
 20 reserved to the time of trial.
 21
 22 * * * *
 23
 24
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 2 APPEARANCES:
 3
 4 NASS & ROPER LAW, LLP
 5 Attorneys for the Plaintiff
 6 ROBERT TORTORA
 7 14 Penn Plaza, Suite 2004
 8 Manhattan, New York 10123
 9 BY: DAVID ZELMAN, ESQ. of Counsel
 10
 11 ZACHARY W. CARTER, ESQ.
 12 CORPORATION COUNSEL
 13 NEW YORK CITY LAW DEPARTMENT
 14 Attorneys for the Defendants
 15 CITY OF NEW YORK,
 16 POLICE DETECTIVE MALCOLM DANZIGER,
 17 POLICE OFFICER TIMOTHY DONNELLY,
 18 POLICE OFFICER JOHN/JANE DOE(S)
 19 #S 1-3
 20 100 Church Street
 21 New York, New York 10007
 22 BY: CHERIE N. BROWN, ESQ.
 23 CHEBROWN@LAW.NYC.GOV
 24
 25 OFFICE OF THE DISTRICT ATTORNEY
 RICHMOND COUNTY
 1 ASSISTANT DISTRICT ATTORNEY
 2 DEPUTY CHIEF, APPEALS BUREAU
 3 Attorneys for the Defendant
 4 RHIANNON LA TOUR, ESQ.
 5 130 Stuyvesant Place
 6 Staten Island, New York 10301
 7 BY: ANNE GRADY, ESQ.
 8 anne.grady@rcda.nyc.gov
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1 R. LA TOUR, ESQ.
 2 RHIANNON LA TOUR, ESQ., called
 3 as a witness, having been first duly sworn
 4 by a Notary Public of the State of New York,
 5 was examined and testified as follows:
 6 EXAMINATION BY
 7 MR. ZELMAN:
 8 Q. Please state your name for the
 9 record.
 10 A. Rhiannon La Tour, Esq.
 11 Q. Where is your place of business?
 12 A. Office of the District Attorney,
 13 Richmond County, 130 Stuyvesant Place,
 14 Staten Island, New York 10301.
 15 Q. Good morning, Ms. La Tour. First
 16 name?
 17 A. Good morning. R-H-I-A-N-N-O-N,
 18 Rhiannon.
 19 Q. Good morning. My name is
 20 David Zelman. I am the attorney for Robert
 21 Tortora in a federal case pending in the
 22 Eastern District of New York. We were
 23 informed that you were the ADA assigned to a
 24 case called People versus Tortora back in, I
 25 believe it was in 2015.

1 (Pages 1 to 4)

1 R. LA TOUR, ESQ.
 2 A. 2014.
 3 Q. Thank you. I will ask you some
 4 questions about that. And as you know, your
 5 testimony is under oath?
 6 A. Yes.
 7 Q. How long have you been with
 8 Richmond County DA's office?
 9 A. Since February of 2009.
 10 Q. And from 2009 to 2014, did you
 11 have many different functions there or were
 12 you assigned to the one particular role?
 13 A. I had a few roles.
 14 Q. The role that you were assigned to
 15 in 2014, were you in that role for the
 16 entire calendar year?
 17 A. No.
 18 Q. What was the role that you had in
 19 April of 2014?
 20 A. I was the line assistant in the
 21 Special Victims Bureau.
 22 Q. Okay. How long did you have that
 23 role?
 24 A. From October of 2010 until I
 25 believe March of 2016.

1 R. LA TOUR, ESQ.
 2 Tricia Curulli.
 3 Q. What was that previous
 4 involvement?
 5 A. I was assigned to prosecute a case
 6 against Vincent Curulli where Tricia Curulli
 7 was the victim.
 8 Q. And what year was that?
 9 A. I believe also 2014.
 10 Q. Is that how you met Tricia
 11 Curulli?
 12 A. Yes.
 13 Q. Then, this new case comes up and
 14 why is it assigned to you, if you know?
 15 A. I don't know. Because I did not
 16 assign it.
 17 Q. Okay. But you said -- is it the
 18 custom or practice of the District
 19 Attorney's office to assign you a second
 20 case if you have already quote unquote
 21 already represented the client on a prior
 22 case?
 23 MS. BROWN: Objection.
 24 MS. GRADY: Objection.
 25 A. Yes.

1 R. LA TOUR, ESQ.
 2 Q. So were you a line assistant when
 3 you were involved in the prosecution of Mr.
 4 Tortora?
 5 A. Yes.
 6 Q. Tell us what does the line
 7 assistant do, day-to-day operation.
 8 A. Handle cases. Prosecuting cases.
 9 Q. Does that mean you were assigned
 10 to specific cases?
 11 A. Yes.
 12 Q. And is it any specific type of
 13 case that you would get as a line assistant?
 14 A. In the Special Victims Bureau, I
 15 would receive any case falling within that
 16 category. Some misdemeanors, some felonies.
 17 In that category would include domestic
 18 violence cases, as well as felonies against
 19 children, as well as sex assault cases.
 20 Q. Okay. Now, is it true that you
 21 were assigned to the Tortora case because it
 22 had some relevance to domestic violence?
 23 MS. BROWN: Objection. Go ahead.
 24 A. I was assigned to the Tortora case
 25 because I had previous involvement with

1 R. LA TOUR, ESQ.
 2 Q. With respect to that prior case,
 3 can you tell us the sum and substance of
 4 that case? You said "assault case" is that
 5 what it was?
 6 MS. GRADY: Can you repeat the
 7 question?
 8 MS. BROWN: Can you repeat
 9 question?
 10 (Whereupon, the referred-to
 11 question was read back by the
 12 reporter.)
 13 THE WITNESS: Do you want me to
 14 answer?
 15 MS. BROWN: Yes.
 16 A. I did not say what kind of case it
 17 was.
 18 Q. Was it an assault case?
 19 A. Yes, it was.
 20 Q. What was the outcome of that case?
 21 A. I don't know.
 22 Q. Did it not go to trial?
 23 A. I don't know.
 24 Q. Were you assigned to that case
 25 throughout the whole case?

1 R. LA TOUR, ESQ.
 2 A. I was not.
 3 Q. How much involvement did you have
 4 in that case, days, weeks, months?
 5 A. I don't know exactly how long.
 6 Q. Is there a reason that you were
 7 stopped in the middle of that case?
 8 A. I went on leave.
 9 Q. When were you on leave?
 10 A. I left for a planned leave in
 11 August of 2014.
 12 Q. To when?
 13 A. February of 2015.
 14 Q. So with respect to this case
 15 against Mr. Tortora, what is the first
 16 information that you got and from what
 17 source?
 18 MS. BROWN: Objection. Just for
 19 clarification, I will say objection,
 20 you can still answer the question
 21 unless I direct you not to answer and
 22 direct you not to answer.
 23 A. I received the file that contained
 24 various paperwork. And that was the first I
 25 got it.

1 R. LA TOUR, ESQ.
 2 MS. GRADY: Objection.
 3 Q. You can answer. As a general rule
 4 unless you get instructed not to answer, you
 5 can answer.
 6 MR. ZELMAN: I have had this issue
 7 before. Judges allow it.
 8 A. The Discovery that you received.
 9 Q. Okay. And do you remember what
 10 you got? What was in the file? What
 11 documents were in the file?
 12 A. I believe it was turned over to
 13 you. Which would have been the District
 14 Attorney's office data sheet, the Complaint
 15 drafted by an Assistant District Attorney,
 16 the Notice given at that arraignment,
 17 various police reports.
 18 Q. When you got the file, the
 19 arraignment had already happened?
 20 A. That's correct.
 21 Q. Do you remember how long after the
 22 arraignment you got the file, a day, a week,
 23 a month, something else?
 24 A. I don't recall the exact day.
 25 Q. Okay. Do you remember

1 R. LA TOUR, ESQ.
 2 Q. Who did you receive it from?
 3 A. It was just assigned to me.
 4 Q. Was it the supervisor who assigned
 5 it to you?
 6 A. Usually supervisors assign cases.
 7 Q. Do you know who it was?
 8 A. I don't know who assigned it to
 9 me.
 10 Q. Were there discussions with the
 11 supervisor at that time that it was being
 12 assigned to you because you had involvement
 13 with the victim?
 14 A. No.
 15 MS. GRADY: Objection.
 16 Q. So when you got the file, do you
 17 remember what day that was?
 18 A. No.
 19 Q. Do you have any notes about that,
 20 what day you received the file?
 21 A. No.
 22 Q. Did you review anything to prepare
 23 for today's deposition?
 24 A. Yes.
 25 Q. What did you review?

1 R. LA TOUR, ESQ.
 2 approximately how long it would have been?
 3 A. It was less than a month.
 4 Probably more than a day.
 5 Q. Do you remember speaking to
 6 anybody at the District Attorney's office
 7 about the case? Did you have any
 8 conversations with the ADA who handled this
 9 case; if you recall?
 10 MS. GRADY: Objection. Privilege.
 11 Do not answer.
 12 MR. ZELMAN: If she had
 13 conversations.
 14 MS. GRADY: Whether she had
 15 conversations or not.
 16 A. No.
 17 Q. You did not have conversations?
 18 A. I did not.
 19 Q. Okay. So when you picked up the
 20 file and read through it, what did you learn
 21 about the case?
 22 MS. BROWN: Objection. You can
 23 answer.
 24 MS. GRADY: Go ahead.
 25 A. Just what was in the document. I

1 R. LA TOUR, ESQ.
 2 read all of the documents.
 3 Q. Okay. So just give us like a
 4 synopsis of what you learned about the case?
 5 A. So I learned that Tricia Curulli's
 6 babysitter was home. Tricia Curulli was not
 7 home. The babysitter observed a truck pull
 8 up to the shed or garage located at
 9 Ms. Curulli's property or garage.
 10 Individuals got out of the truck, broke the
 11 lock on the shed, took various items out of
 12 the shed, pulled away.
 13 I learned that Robert Tortora had
 14 been identified. There was a line up.
 15 Robert Tortora was arrested. He made a
 16 statement to the police. And that's the
 17 synopsis of the case I guess.
 18 Q. Okay. Now, at any point, did you
 19 have pictures in the file?
 20 A. Yes.
 21 Q. What pictures did you have?
 22 A. I believe there was some sort of
 23 photograph of Mr. Tortora with writing on it
 24 by the eyewitness. And there were pictures
 25 of a truck by a shed. That was the shed

1 R. LA TOUR, ESQ.
 2 that was identified as the shed located on
 3 Ms. Curulli's property.
 4 Q. This picture of Mr. Tortora, was
 5 this a picture taken at the scene of the
 6 incident or some other time?
 7 A. I don't know when it was taken.
 8 It does not appear to be at the house.
 9 Q. Okay. So it is a picture of him
 10 looking at the picture smiling, that kind of
 11 thing?
 12 A. I believe so.
 13 Q. Were you informed of where that
 14 picture came from or how that picture got
 15 into the file?
 16 A. I don't believe so.
 17 Q. Did you ever come to learn how it
 18 came to be in the file?
 19 A. I don't believe so.
 20 Q. Were there any other pictures of
 21 people in the file?
 22 A. I don't believe so.
 23 Q. The eyewitness testified that she
 24 provided the police officers with pictures
 25 of the people who were at the scene of the

1 R. LA TOUR, ESQ.
 2 incident, did you ever view that?
 3 A. I don't --
 4 MS. BROWN: Objection.
 5 A. I don't believe so.
 6 Q. Did you ever learn if there were
 7 other pictures that there were not made
 8 available to you?
 9 MS. BROWN: Objection.
 10 A. No, I did not learn of any other
 11 pictures.
 12 Q. Now, when you picked up the file,
 13 you said Mr. Tortora had given a statement;
 14 is that right?
 15 A. Yes.
 16 Q. What was that?
 17 A. I can't recall the exact
 18 statement. I believe the sum and substance
 19 of the statement was that Mr. Curulli had
 20 asked him to pick up some property for him
 21 at the house. I believe part of the
 22 statement was also that he was not in
 23 Staten Island when the event occurred.
 24 Q. Were you made aware of any alibi
 25 evidence when you got the file or

1 R. LA TOUR, ESQ.
 2 thereafter?
 3 MS. GRADY: From whom?
 4 MR. ZELMAN: At any point from
 5 anybody.
 6 MS. GRADY: Objection. Go ahead.
 7 THE WITNESS: Can I answer now?
 8 MS. GRADY: If you understand the
 9 question.
 10 A. I was made aware that there was --
 11 that Mr. Tortora was saying he was in Ocean
 12 City, Maryland at the time of the incident.
 13 Q. Other than that, were you provided
 14 a video of him?
 15 A. I was never provided a video.
 16 Q. Do you remember the source of that
 17 information: Was it through his statement
 18 that he was claiming to be there?
 19 MS. BROWN: Objection.
 20 A. His statement was one source of
 21 information.
 22 Q. And what other source of
 23 information was it that you recall about
 24 Ocean City, Maryland or about him being in
 25 Ocean City, Maryland?

1 R. LA TOUR, ESQ.
 2 MS. BROWN: Objection.
 3 A. So his defense attorney said
 4 something about it.
 5 Q. And that was one of the
 6 appearances that you attended?
 7 A. I never attended an appearance in
 8 court.
 9 Q. How were you made aware of what
 10 defense counsel said, from a report or
 11 another ADA?
 12 A. I know at one point that I had a
 13 conversation with a defense attorney.
 14 Q. Okay. Was there any video in the
 15 file of Ocean City, Maryland showing him
 16 being in Ocean City, Maryland at the time of
 17 the incident?
 18 A. No.
 19 Q. Were you ever provided with that?
 20 A. No.
 21 Q. There has been testimony in this
 22 case that a retired detective spoke to
 23 investigating officer, I think Mr. Danziger,
 24 about being with Mr. Tortora in Ocean City,
 25 Maryland at the time of the incident, were

1 R. LA TOUR, ESQ.
 2 When was this arrest?
 3 A. I believe it was May of 2014.
 4 Q. The arrest?
 5 A. I believe so.
 6 Q. So when did you handle this case?
 7 A. It would have been from May of
 8 2014 until August of 2014.
 9 Q. I thought -- I got it. Was the
 10 case dismissed from before you left?
 11 A. It was still open when I left.
 12 Q. So you handled this case from May
 13 to August 2014?
 14 A. Yes.
 15 Q. At any point, did you make a
 16 decision about what to do with the case?
 17 A. Yes.
 18 Q. What was that decision?
 19 A. At that point in time, I was not
 20 going to indict the case.
 21 Q. And do you remember when that
 22 decision was made?
 23 A. I'm sorry?
 24 Q. Do you remember when that decision
 25 was made?

1 R. LA TOUR, ESQ.
 2 you ever made aware from any source about
 3 Mr. Keen's statement with Mr. Danziger?
 4 MS. BROWN: Objection.
 5 A. I don't believe so.
 6 Q. Did you ever have a conversation
 7 with Mr. Danziger?
 8 A. I don't believe so.
 9 Q. Did you ever speak to anybody, any
 10 officer, employed officer about this case
 11 during the prosecution of this case?
 12 A. I don't believe so.
 13 Q. Did anyone try to contact you?
 14 MS. BROWN: Objection.
 15 A. I would not know if somebody tried
 16 to contact me.
 17 Q. To the best of your recollection,
 18 how many appearances were there in this
 19 case?
 20 A. I don't know.
 21 Q. Do you remember how many months it
 22 lasted?
 23 A. I don't know. I went on leave in
 24 August of 2014.
 25 Q. So let us get a time frame here.

1 R. LA TOUR, ESQ.
 2 A. No.
 3 Q. Let me show you what has been
 4 marked as Defendant's Exhibit 73 for
 5 identification.
 6 MS. BROWN: Can we have this
 7 marked by the court reporter as an
 8 exhibit, Plaintiff's Exhibit 1.
 9 (Whereupon, the aforementioned
 10 City's Def-73/buck sheet, was marked as
 11 Plaintiff's Exhibit 1, for
 12 identification as of this date by the
 13 reporter.)
 14 MR. ZELMAN: I'll take a quick
 15 break.
 16 (Whereupon, a short recess was
 17 taken.)
 18 MR. ZELMAN: Back on the record.
 19 I am showing the witness what has been
 20 marked as Defendant's 73.
 21 Q. Do you recognize that document?
 22 A. I do.
 23 Q. Is your handwriting on there?
 24 A. I see my handwriting a little bit.
 25 Q. Show us where.

1 R. LA TOUR, ESQ.
 2 A. So, my handwriting is that little
 3 "no grange reaction, no offer, 918, part
 4 one."
 5 Q. Do you see where it says "Brady on
 6 inside note put on record?"
 7 A. I see that.
 8 Q. What does that refer to?
 9 A. Based on my recollection of the
 10 court file, there was a note on the inside
 11 that listed brady material. "Brady" is
 12 exculpatory information that has to be
 13 provided to the Defendant.
 14 Q. So what was it?
 15 MS. GRADY: Objection.
 16 MR. ZELMAN: She said it was put
 17 on the record.
 18 A. I didn't say it was put on the
 19 record. I said the note was put on record.
 20 Q. All right. So what was the brady
 21 material? If you recall.
 22 MS. GRADY: Objection. If you
 23 know.
 24 A. So I believe it had to do with --
 25 not sure -- with the identification

1 R. LA TOUR, ESQ.
 2 A. An eyewitness?
 3 Q. Right.
 4 A. No.
 5 Q. What did she tell you?
 6 A. I don't recall her exact words.
 7 The sum and substance would be that it was
 8 her house. That her babysitter was there,
 9 but she was not. And basically a recap of.
 10 The story that the babysitter had told the
 11 police according to what was in the police
 12 records.
 13 Q. Okay. Did she ever say she
 14 thought it was Mr. Tortora who did this
 15 crime or not?
 16 A. I don't remember.
 17 MS. BROWN: Objection. Go ahead.
 18 A. I don't recall.
 19 Q. Did you ever speak to the
 20 eyewitness?
 21 A. I believe so.
 22 Q. Is that also over the phone?
 23 A. I don't believe so.
 24 Q. Did you ever speak to her in
 25 person?

1 R. LA TOUR, ESQ.
 2 procedure.
 3 Q. Does that mean the lineup?
 4 MS. BROWN: Objection.
 5 A. It would refer to the lineup.
 6 Q. Do you know specifically what was
 7 said on the record regarding the lineup?
 8 A. I don't.
 9 Q. Do you know when that was put on
 10 the record?
 11 A. I don't know if it was put on the
 12 record. I know the note says put it on the
 13 record.
 14 Q. Did you speak to Ms. Curulli about
 15 this case?
 16 A. I believe so.
 17 Q. Was that at your office, or some
 18 other location, over the phone?
 19 A. I believe over the phone while I
 20 was in my office.
 21 Q. Do you remember if you spoke to
 22 her once or more than once?
 23 A. I don't recall.
 24 Q. She was not a witness to this
 25 incident, right?

1 R. LA TOUR, ESQ.
 2 A. No.
 3 Q. Was it one time or more than one
 4 time?
 5 A. I don't recall.
 6 Q. Did she call you or did you call
 7 her?
 8 A. I would have called.
 9 Q. Would you have called her when you
 10 received the file or contemporaneous with
 11 that?
 12 A. Yes.
 13 Q. What did she say to you?
 14 A. Basically what would have been in
 15 the file. That she was at the house,
 16 Ms. Curulli was not. A truck pulled up,
 17 pictures were taken of the truck. I believe
 18 she took pictures of the truck.
 19 People had gotten out, went into
 20 the shed, took property out of the shed,
 21 they drove off.
 22 Q. Did she say she recognized
 23 anybody?
 24 A. She did not know them.
 25 Q. Did you ask her about whether she

1 R. LA TOUR, ESQ.
 2 was able to see them, like their faces?
 3 A. I don't recall.
 4 Q. Did she say that she saw their
 5 faces?
 6 A. I don't recall.
 7 Q. Did she say how, did you ask her
 8 how she was able to identify anybody?
 9 A. I don't recall if I asked her
 10 that.
 11 Q. Do you remember if she said
 12 anything about that?
 13 A. My recollection of the story was
 14 that she said that she gave description to
 15 Tricia. And she was shown pictures I
 16 believe from a wedding album of people that
 17 Tricia thought it could have been. And that
 18 she picked somebody out from those pictures.
 19 And subsequent to that, she picked
 20 Mr. Tortora out of a lineup.
 21 Q. And to the best of your knowledge,
 22 when Ms. Curulli showed pictures to her from
 23 the wedding album, were the officers there
 24 at that time?
 25 A. According to the story? According

1 R. LA TOUR, ESQ.
 2 Mr. Tortora in the case?
 3 MS. BROWN: Objection. Go ahead.
 4 A. I thought his statement was
 5 evidence against him.
 6 Q. Okay. Anything else?
 7 A. I don't know what you mean.
 8 Q. Anything else that was inculpatory
 9 other than her statement and his statement.
 10 A. I think that is a hard question to
 11 answer if you are talking about physical
 12 evidence.
 13 Q. Okay.
 14 A. No, there was not.
 15 Q. How about the neighbor's
 16 statements?
 17 A. I don't recall neighbor's
 18 statements. I do recall a neighbor
 19 confirmed with the police according to the
 20 detective's notes that a neighbor also saw a
 21 truck pull up I believe.
 22 Q. Okay. But the neighbor did not
 23 say who was in the truck or provided a
 24 description?
 25 A. I don't believe so.

1 R. LA TOUR, ESQ.
 2 to the story, no. This would have been
 3 before the police report was even made.
 4 Q. When you say "the story," what do
 5 you mean by that?
 6 A. The recounting of the incident.
 7 Q. By who?
 8 A. By I believe both Mr. Deluca and
 9 Ms. Curulli.
 10 Q. With respect to the truck, were
 11 you able to gain any plate information, et
 12 cetera with the truck?
 13 A. Not that I recall.
 14 Q. Do you remember any investigation
 15 that was done as to whose truck it was?
 16 A. I believe so.
 17 Q. What was the -- just if you can
 18 recount that investigation.
 19 A. I don't recall. It was not done
 20 by me.
 21 Q. Do you remember the results of it?
 22 A. I don't recall.
 23 Q. Do you remember if besides
 24 Ms. Deluca's alleged identification, do you
 25 recall any other evidence against

1 R. LA TOUR, ESQ.
 2 Q. Was there surveillance of the
 3 truck driving away, if you know?
 4 A. All I know about are the pictures.
 5 Q. Do you know if the property was
 6 ever recovered?
 7 A. Not to my knowledge.
 8 Q. Do you know if the lock was broken
 9 to get into the shed or something else?
 10 A. That is my recollection of the
 11 account. He said that the lock was broken.
 12 Q. Did they collect the broken lock?
 13 A. I don't recall.
 14 Q. Were you able to ascertain this
 15 property in the shed was Ms. Curulli's?
 16 MS. BROWN: Objection.
 17 A. The information that I received
 18 from Ms. Curulli herself is that it was
 19 Mr. Curulli's property.
 20 Q. Okay. Did you ever attempt to
 21 contact Mr. Curulli?
 22 A. No.
 23 Q. Any reason?
 24 A. At that point in time, he was
 25 still a Defendant represented by counsel in

1 R. LA TOUR, ESQ.
 2 another case I believe.
 3 Q. All right. As he became a victim
 4 in this case if his property was stolen,
 5 right?
 6 A. No.
 7 MS. BROWN: Objection.
 8 Q. You said it was Ms. Curulli it was
 9 Mr. Curulli's property?
 10 A. That's correct.
 11 Q. So his property was stolen, right?
 12 A. No.
 13 Q. Why not?
 14 A. According to my previous
 15 testimony, the statement by Mr. Tortora, was
 16 that Mr. Curulli asked him to get his
 17 property.
 18 Q. Right. I thought you said
 19 Ms. Curulli told you that the property
 20 belonged to Mr. Curulli?
 21 A. That's correct. And Mr. Tortora
 22 said Mr. Curulli asked him to take his
 23 property.
 24 Q. Okay. What I am saying is, if the
 25 property was stolen and it belonged to

1 R. LA TOUR, ESQ.
 2 took the data sheet?
 3 A. No.
 4 Q. Did you ever speak to a Defendant,
 5 Donnelly about the case?
 6 A. Detective?
 7 Q. Yes.
 8 A. No.
 9 Q. To the best of your knowledge,
 10 were you made aware that Mr. Tortora claimed
 11 to have been driving in a vehicle with a
 12 retired judge around the time of this
 13 incident?
 14 A. I don't recall.
 15 Q. So the only information that you
 16 had about the alibi defense was from
 17 Mr. Tortora himself; is that correct?
 18 A. No.
 19 Q. What other source of information
 20 about the alibi did you have?
 21 A. At some point during the
 22 prosecution of the case from his defense
 23 attorney at the time, I received copies of
 24 receipts from gas stations as well as a
 25 printed out copy of hotel reservation

1 R. LA TOUR, ESQ.
 2 Mr. Curulli, he is a victim in that case?
 3 A. No.
 4 Q. Why not?
 5 A. Not if he is the one who asked his
 6 friend Mr. Tortora to take his property for
 7 him.
 8 Q. I see. Did you ever get receipts
 9 for the property?
 10 A. No.
 11 Q. What was stolen, if you recall?
 12 A. I don't recall everything. I do
 13 recall a boat motor. I don't recall
 14 anything else. The boat motor sticks out to
 15 me.
 16 Q. Were you ever made aware of a
 17 controlled call to Mr. Curulli in the case?
 18 A. Not at the time of the incident.
 19 Q. At the present time during your
 20 prosecution of the case?
 21 A. No.
 22 Q. I take it that you learned about
 23 it long after?
 24 A. Yes.
 25 Q. Did you ever speak to the ADA who

1 R. LA TOUR, ESQ.
 2 confirmation. I believe that is the extent
 3 of the information that I got.
 4 Q. All right. Did you discuss that
 5 with defense counsel?
 6 A. I did.
 7 Q. Tell us the sum and substance of
 8 that discussion.
 9 A. I did not find the receipts for
 10 the gas stations very helpful, because there
 11 was no name on any of the receipts. They
 12 were just receipts for gas stations.
 13 And the printed out confirmation,
 14 I did not find very helpful. Because it was
 15 a printed out booking confirmation. It does
 16 not mean that he actually went there.
 17 I did not receive anything other
 18 than that. I believe a video was mentioned
 19 at some point. It was never provided to me.
 20 Q. Apparently according to the
 21 original data sheet, there were two males
 22 involved in the case. Do you remember any
 23 investigation done as to the other male?
 24 MS. BROWN: Objection.
 25 A. No.

1 R. LA TOUR, ESQ.
 2 Q. Do you remember any discussions
 3 about who that might have been?
 4 A. I don't remember any discussions.
 5 Q. It also says that there was a
 6 black power washer in the bed of the pickup
 7 truck; does that refresh your recollection
 8 as to what was allegedly stolen?
 9 A. I don't know. All I recall was
 10 the boat motor. It stuck out to me. I know
 11 the other items were various sorts of, you
 12 know, tools or lawn stuff that would have
 13 been in a shed. But I don't recall.
 14 Q. Did Ms. Curulli say those things
 15 belonged to her ex?
 16 MS. BROWN: Objection.
 17 A. She told me everything that was
 18 taken belonged to her ex.
 19 Q. Did you ever meet Mr. Tortora?
 20 A. No.
 21 Q. Did you ever see him in court?
 22 A. No.
 23 Q. Were you ever made aware of any
 24 health issues that he had?
 25 MS. BROWN: Objection.

1 R. LA TOUR, ESQ.
 2 A. Yes.
 3 Q. Do you see your handwriting there
 4 anywhere?
 5 A. No.
 6 Q. On the bottom it says "dismissed."
 7 Can you read it?
 8 A. "Cannot prove BRD."
 9 Q. And B-R-D stands for?
 10 A. Beyond Reasonable Doubt.
 11 Q. That decision was made after you
 12 left the DA's office, after you were on
 13 leave; is that accurate?
 14 A. When was the decision made or when
 15 was this written?
 16 Q. Either, if you know.
 17 A. The dismissal happened after I
 18 left.
 19 Q. Okay. It was the decision of the
 20 DA's office to dismiss the case, correct?
 21 A. What I know is that I was not
 22 going to indite the case.
 23 Q. But by not inditing the case that
 24 is not dismissing the case, right?
 25 A. Not inditing the case is not the

1 R. LA TOUR, ESQ.
 2 A. No.
 3 Q. Did you know the ultimate outcome
 4 of this case?
 5 A. As far as I know, it was
 6 eventually dismissed.
 7 MR. ZELMAN: Can we have this
 8 marked for identification as
 9 Plaintiff's Exhibit 2, for
 10 identification?
 11 (Whereupon, the aforementioned
 12 document Bates Def-71 was marked as
 13 Plaintiff's Exhibit 2, for
 14 identification as of this date by the
 15 reporter.)
 16 MS. BROWN: What Bates number is
 17 on that?
 18 MS. GRADY: Defendant 71.
 19 Q. Directing your attention to Bates
 20 71; is that part of the court file for this
 21 case?
 22 A. Part of the court file?
 23 Q. Yes.
 24 A. No.
 25 Q. Is it part of the DA file?

1 R. LA TOUR, ESQ.
 2 same as dismissing the case; that's correct.
 3 Q. Sure. What is the difference?
 4 A. Well, when you indite the case,
 5 you present it to the Grand Jury. When you
 6 dismiss the case, you make a motion to the
 7 judge to have the charges dismissed.
 8 Q. Okay. The decision not to indite,
 9 that's made within eight days of the arrest;
 10 is that right?
 11 A. No.
 12 Q. Okay. How long after the arrest
 13 does the decision not to indite need to be
 14 made?
 15 A. You have six months to prosecute a
 16 felony charge.
 17 Q. Do you remember when the decision
 18 was made not to indite in terms of vis-a-vis
 19 the arrest?
 20 A. I decided that I would not indite
 21 the case. I don't recall exactly when. It
 22 was after I was assigned the case, before I
 23 left.
 24 Q. Would you say it was towards the
 25 beginning portion of when you got the case,

1 R. LA TOUR, ESQ.
 2 towards the end, somewhere in the middle, or
 3 something else?
 4 MS. BROWN: Objection.
 5 A. I would say it was made within the
 6 first month.
 7 Q. Okay. That document in front of
 8 you indicates that at some point the
 9 District Attorney's office decided to
 10 dismiss the case because they could not
 11 prove it beyond a reasonable doubt, correct?
 12 A. That is what it indicates.
 13 MS. BROWN: Objection.
 14 THE WITNESS: Sorry.
 15 Q. Did you ever have discussions with
 16 anybody about that decision?
 17 MS. GRADY: Objection. That calls
 18 for privilege information.
 19 MR. ZELMAN: If she had
 20 discussions.
 21 MS. GRADY: You are asking a very
 22 content-specific question. Whether she
 23 had a conversation with people about
 24 the case being able to prove beyond a
 25 reasonable doubt. That is privileged.

1 R. LA TOUR, ESQ.
 2 case, that's a felony. It would be an
 3 eventual dismissal based on you running out
 4 of your 30-30 time.
 5 Q. Got it. This case was not
 6 dismissed on 30-30; this case was dismissed
 7 by a motion of DA, correct?
 8 MS. BROWN: Objection. You know,
 9 if you know.
 10 A. I don't know what happened in
 11 court.
 12 Q. Sometimes the DA's office will
 13 dismiss a case because if they don't, it
 14 will be dismissed 30-30; is that correct?
 15 MS. GRADY: Objection.
 16 Privileged.
 17 MR. ZELMAN: I am not asking about
 18 this case. In general.
 19 MS. GRADY: Exactly.
 20 MR. ZELMAN: Okay.
 21 Q. Do you know if the District
 22 Attorney's office ever investigated that
 23 alibi defense other than just receiving the
 24 information from defense counsel?
 25 MS. BROWN: Objection.

1 R. LA TOUR, ESQ.
 2 MR. ZELMAN: I respectfully
 3 disagree.
 4 Q. Were you ever made aware that
 5 there was a motion to dismiss made by the
 6 District Attorney's office?
 7 A. At a later time I found out that
 8 the case was dismissed.
 9 Q. Okay. Did you ever find out
 10 before it was dismissed that someone planned
 11 to have it dismissed?
 12 MS. GRADY: Objection.
 13 Privileged.
 14 MR. ZELMAN: Privileged? I did
 15 not ask about the conversation. I
 16 asked if she became aware that someone
 17 planned to make that motion.
 18 MS. GRADY: How would she become
 19 aware except through privileged
 20 conversation? Okay, if she became
 21 aware of it without it being a
 22 privilege conversation.
 23 A. I don't think that I ever became
 24 aware of a specific plan to dismiss. The
 25 natural outcome of deciding not to indict a

1 R. LA TOUR, ESQ.
 2 A. I can only speak as to what I did.
 3 Q. You testified earlier you did not,
 4 right?
 5 A. I did not what?
 6 Q. Investigate the alibi?
 7 A. I did not say that.
 8 Q. Did you investigate the alibi?
 9 A. The documents that I testified
 10 earlier that I received, I received because
 11 I asked for them.
 12 Q. Okay.
 13 A. I also know that I compared some
 14 of the times and the Defendant's statements
 15 against Google Maps between the time of the
 16 address and the address of the hotel that he
 17 gave me the confirmation for. And based on
 18 his statement, I believe that he arrived in
 19 Ocean City around 12:30, 12:50.
 20 I believed also according to the
 21 information that is provided by Google Maps
 22 that if there is no traffic that he could
 23 have done that and been in Ocean City,
 24 Maryland at the time that he gave.
 25 And because I received no

1 R. LA TOUR, ESQ.
 2 dispositive alibi material to discount that,
 3 then it was not helpful to me.
 4 Q. I'm sorry if I misheard you. But
 5 did you say you became aware that there was
 6 a video at some point?
 7 A. That's correct.
 8 Q. And did you ask for that video?
 9 A. I did.
 10 Q. From defense counsel?
 11 A. That's correct.
 12 Q. But never got it?
 13 A. That's correct.
 14 Q. At the time of his arrest and at
 15 the time of his arraignment, you had not
 16 been assigned to this case, correct?
 17 A. That's correct.
 18 Q. During your representation of The
 19 People, did you ever become aware of how
 20 long he was detained before arraignment?
 21 A. I would have been able to look at
 22 the police report to ascertain that.
 23 Q. Did it ever come up as an issue?
 24 A. No.
 25 MS. BROWN: Objection.

1 R. LA TOUR, ESQ.
 2 (Whereupon, the aforementioned
 3 Defendant-52, was marked as Plaintiff's
 4 Exhibit 4, for identification as of
 5 this date by the Reporter.)
 6 Q. Directing your attention to
 7 Plaintiff's Exhibit 4, Defendant-52; do you
 8 recall if that would have been a document
 9 that you viewed when you received the file?
 10 A. I'm taking a moment to look at it.
 11 Q. Sure.
 12 A. Yes.
 13 Q. All right. Just directing your
 14 attention to that little squib on the bottom
 15 of the page. Can you read the last two
 16 sentences?
 17 A. Where it says "detailed summary of
 18 investigation?"
 19 Q. Yes.
 20 A. Starting from "wooden door" or
 21 starting with "conferred?"
 22 Q. Wooden door.
 23 A. "Wooden door from the shed was
 24 non-conducive for fingerprint. And padlock
 25 from the door was taken by the perpetrators.

1 R. LA TOUR, ESQ.
 2 THE WITNESS: Sorry.
 3 MR. ZELMAN: Can we mark this as
 4 Plaintiff's Exhibit 3, for
 5 identification?
 6 (Whereupon, the aforementioned
 7 photograph was marked as Plaintiff's
 8 Exhibit 3, for identification as of
 9 this date by the reporter.)
 10 Q. I will show you what has been
 11 marked as Plaintiff's Exhibit 3, Def's-35.
 12 Do you recall if that is the photograph that
 13 you testified to earlier that you received?
 14 A. Yes.
 15 Q. So that looks like a photograph of
 16 somebody at a party or something to that
 17 effect?
 18 MS. BROWN: Objection.
 19 A. I don't know.
 20 MS. BROWN: I don't have a copy.
 21 So would I be able to see that please?
 22 Thank you.
 23 MR. ZELMAN: Let us mark this as
 24 well, Defendant's 52, Plaintiff's
 25 Exhibit 4.

1 R. LA TOUR, ESQ.
 2 Conferred on the scene with "Detective
 3 Denzinger, D-E-N-Z-I-N-G-E-R, tax number
 4 917500. Babysitter who was in the house at
 5 time of the burglary did take photographs of
 6 the perpetrators."
 7 Q. Did you ever ask for those
 8 photographs?
 9 MS. BROWN: Objection.
 10 A. I asked for photographs taken.
 11 Q. Did you ever have a discussion
 12 with any of the officers, or anyone, or
 13 Ms. Deluca about photographs of the
 14 perpetrators?
 15 A. I don't recall if I specifically
 16 said pictures of the perpetrators.
 17 Q. Do you remember being informed
 18 they were available or not available?
 19 A. I asked for photographs. The
 20 photographs that I received were the
 21 photographs of the truck. I don't recall if
 22 individuals were in those photographs.
 23 Q. Okay. And do you ever remember
 24 specific conversation that -- is this a DD5?
 25 A. It is a DD5.

1 R. LA TOUR, ESQ.
 2 Q. Did you ever have a conversation
 3 with anyone if you recall about the fact
 4 that the DD5 says that the witness took
 5 photographs of the perpetrators but you did
 6 not have photographs of the perpetrators?
 7 MS. BROWN: Objection.
 8 A. I don't recall specific
 9 conversations about photographs of the
 10 perpetrators.
 11 Q. Okay.
 12 MR. ZELMAN: I'll take a quick
 13 break.
 14 (Whereupon, a short recess was
 15 taken.)
 16 MR. ZELMAN: Back on the record.
 17 Q. A couple of follow-up questions.
 18 You mentioned that you knew Ms. Curulli
 19 before this incident, you had prosecuted a
 20 case against Mr. Curulli, correct?
 21 A. Yes.
 22 Q. Have you ever spoken to
 23 Mr. Curulli?
 24 A. No.
 25 Q. In that prior case, how many

1 R. LA TOUR, ESQ.
 2 prosecution of Mr. Tortora?
 3 A. I don't recall.
 4 Q. You met him in person?
 5 A. I believe -- I believe so.
 6 Q. Do you remember what the context
 7 was?
 8 A. No.
 9 Q. What about Donnelly, Defendant
 10 Donnelly; did you ever meet him?
 11 A. Yes.
 12 Q. Do you remember if it was before
 13 or after this prosecution of Mr. Tortora?
 14 A. I believe both.
 15 Q. What context would you meet him?
 16 A. Various arrests that he has made.
 17 Q. Would you typically talk to the
 18 officers when they made an arrest and ended
 19 up prosecuting that arrest?
 20 MS. BROWN: Objection.
 21 A. I don't know about typically,
 22 because each case is a such a case by case
 23 basis. Sometimes I do, sometimes I don't.
 24 Q. And in this case, you testified
 25 that you did not speak to Danziger or

1 R. LA TOUR, ESQ.
 2 contacts did you have with Ms. Curulli; did
 3 you see her, meet her in person?
 4 MS. BROWN: Objection.
 5 A. Yes.
 6 Q. Did you speak to her on the phone?
 7 A. Yes.
 8 Q. You became aware that she was a
 9 retired officer from the Richmond County for
 10 the NYPD?
 11 MS. BROWN: Objection.
 12 A. To my knowledge, yes.
 13 Q. The fact that she was a retired --
 14 was it detective or officer; do you know?
 15 A. I don't know.
 16 Q. The fact that she was retired with
 17 the NYPD, did you handle this witness in any
 18 other way than you would have any other
 19 witness?
 20 MS. BROWN: Objection.
 21 A. No.
 22 Q. Did you ever meet Detective
 23 Danziger in your career?
 24 A. I believe so.
 25 Q. Was it before or after this

1 R. LA TOUR, ESQ.
 2 Donnelly at all?
 3 A. I don't believe I did.
 4 Q. Is there any specific reason that
 5 you recall that you didn't.
 6 MS. GRADY: If you can answer.
 7 Objection to the extent that it calls
 8 for privilege information.
 9 MR. ZELMAN: Okay.
 10 A. At that point in time, I believe I
 11 had gained what I wanted to know about the
 12 case from my conversation and my review from
 13 the paperwork.
 14 Q. You did not feel the need to speak
 15 to them; is that correct?
 16 MS. GRADY: Objection. It calls
 17 for privilege information.
 18 Q. My previous question was, did you
 19 reach out to the officers at all?
 20 A. I don't believe so.
 21 Q. Did they reach out to you?
 22 MS. BROWN: Objection.
 23 A. Not to my knowledge.
 24 Q. Okay. Mr. Tortora, did you ever
 25 meet him before this incident?

1 R. LA TOUR, ESQ.
 2 A. No.
 3 Q. You never met him at all actually?
 4 A. No.
 5 Q. Was there anything that you
 6 learned during the course of this
 7 prosecution that caused you to make the
 8 decision not to indict or was this just
 9 information that you had at the outset?
 10 MS. GRADY: Objection. Calls for
 11 privilege information.
 12 MR. ZELMAN: Are you directing her
 13 not to answer?
 14 MS. GRADY: Yes.
 15 Q. Did you receive any information
 16 about the case other than your conversation
 17 with Curulli, your conversation with Deluca,
 18 and your review of the file that you
 19 received; did you ever receive any
 20 documentation about Ocean City, Maryland?
 21 Other than the file that you
 22 originally received and the paperwork about
 23 the Ocean City, Maryland receipts that you
 24 received and mentioned, did you ever receive
 25 any other documentation or photographs

1 R. LA TOUR, ESQ.
 2 you remember any substantive material that
 3 you learned at the court conferences other
 4 than the receipts about Ocean City,
 5 Maryland?
 6 MS. BROWN: Objection.
 7 THE WITNESS: I am sorry.
 8 A. I don't believe I received a
 9 receipt as a result of the court conference.
 10 I believe I received those documents based
 11 on my conversations with counsel that
 12 occurred off calendar.
 13 I don't believe that I received
 14 any other substantive information from the
 15 court appearances. May I look at the
 16 exhibits again?
 17 Q. (Handing).
 18 A. And looking at Plaintiff's Exhibit
 19 1, in the deposition. It looks like I was
 20 only there prosecuting the case for the one
 21 adjournment.
 22 Q. Okay. It was before that
 23 adjournment that you decided not to indict
 24 the case, correct?
 25 A. It would have been after the

1 R. LA TOUR, ESQ.
 2 during your representation of The People in
 3 the case?
 4 MS. BROWN: Objection.
 5 A. No.
 6 Q. Other than speaking to Curulli and
 7 Deluca, do you recall speaking to anybody
 8 else, any other witnesses, or the officers
 9 regarding this prosecution?
 10 MS. BROWN: Objection.
 11 A. No.
 12 Q. Okay. And you testified
 13 earlier that your conversations with Curulli
 14 and Deluca was over the phone, but do you
 15 remember how many times you spoke to them?
 16 MS. BROWN: Objection.
 17 A. I don't recall.
 18 Q. You don't remember getting any
 19 other information like let's say with
 20 respect to the court appearances informed of
 21 what happened at the court appearances?
 22 A. I'm informed of what happens in
 23 court appearances in terms of being
 24 adjourned.
 25 Q. Without telling me any content, do

1 R. LA TOUR, ESQ.
 2 arraignment on May 4th. And before the
 3 court date on June twenty -- I'm sorry --
 4 before the court date on September 18th.
 5 I don't know exactly when between
 6 May 4th and August of 2014, I made that
 7 decision.
 8 Q. Okay. With respect to the
 9 conversation with defense counsel other than
 10 what you have already testified to, do you
 11 recall any other information that you
 12 learned about the case?
 13 MS. BROWN: Objection. By
 14 "defense counsel," do you mean criminal
 15 defense counsel or defense counsel in
 16 this case?
 17 MR. ZELMAN: No, criminal defense
 18 counsel.
 19 A. No. I believe any substantive
 20 conversation we had about the case was
 21 solely about the alibi. And the extent of
 22 the alibi evidence that I received and that
 23 I had knowledge of is what I testified to
 24 earlier.
 25 Q. How many conversations did you

1 R. LA TOUR, ESQ.
 2 have with defense counsel about the alibi?
 3 A. I don't recall how many. I know
 4 that there were a few.
 5 MR. ZELMAN: That's okay. I have
 6 nothing further.
 7 MS. BROWN: I just have a few
 8 follow-up questions for you.
 9 EXAMINATION BY
 10 MS. BROWN:
 11 Q. Do you recall testifying about
 12 brady material in connection with the
 13 criminal prosecution against Robert Tortora?
 14 A. Yes.
 15 Q. And do you recall testifying about
 16 somehow that brady material had to do with
 17 the lineup in this case?
 18 A. I believe that it had to do with
 19 the identification.
 20 Q. With the identification? What do
 21 you mean that the brady material had to do
 22 with identification?
 23 A. If I remember correctly, I believe
 24 it had to do with the disclosure that the
 25 eyewitness, Ms. Deluca had been shown

1 R. LA TOUR, ESQ.
 2 photographs previous to the lineup.
 3 Q. And to the best of your knowledge,
 4 who showed Ms. Deluca those photographs?
 5 A. Ms. Curulli.
 6 Q. And did she show those photographs
 7 in the presence of any officers; if you
 8 know?
 9 A. To my knowledge, no.
 10 MS. BROWN: No further questions.
 11 MR. ZELMAN: To clarify.
 12 CONTINUED EXAMINATION BY
 13 MR. ZELMAN:
 14 Q. Earlier you testified that you did
 15 not believe the officers were there when the
 16 photograph was shown to Ms. Deluca, correct?
 17 A. I need you to specify what
 18 photograph you are talking about. We have
 19 spoken about a few photographs in the case.
 20 Q. Just to clarify.
 21 A. Yes.
 22 Q. Earlier in the deposition, we were
 23 having discussions about the fact that
 24 Ms. Curulli showed the photographs to
 25 Ms. Deluca before officers arrived.

1 R. LA TOUR, ESQ.
 2 A. Yes.
 3 Q. It is still your understanding
 4 that that is what happened; is that right?
 5 MS. BROWN: Objection.
 6 THE WITNESS: Sorry.
 7 A. My understanding is prior to
 8 Ms. Curulli even calling the police, she
 9 showed these photographs.
 10 Q. And then the police were called
 11 apparently after Ms. Deluca said to
 12 Ms. Curulli that she thinks she can identify
 13 somebody?
 14 MS. BROWN: Objection.
 15 A. That is my understanding.
 16 Q. Now, did you ever learn that the
 17 officers did an actual photographic lineup?
 18 MS. BROWN: Objection.
 19 A. I don't know what you mean by
 20 photographic lineup.
 21 Q. Meaning officers are able to do a
 22 photo-array at the scene of a crime?
 23 A. So a photo-array is different than
 24 a lineup?
 25 Q. Sure. A lineup is in-person.

1 R. LA TOUR, ESQ.
 2 A. Yes.
 3 Q. A photo-array is a photo-array?
 4 A. Yes. Usually comprised of six
 5 people, yes.
 6 Q. So as far as you know, you would
 7 not know the parameters of these pictures
 8 that were shown to Ms. Deluca, if it was one
 9 by one or something else, correct?
 10 MS. BROWN: Objection. What
 11 pictures are you talking about?
 12 MR. ZELMAN: Curulli showed
 13 pictures to Deluca before the officers
 14 came.
 15 A. My understanding is that she
 16 showed her pictures from a wedding album.
 17 Q. Okay.
 18 A. And after Ms. Deluca gave her a
 19 description of who she saw.
 20 Q. Okay.
 21 A. So my understanding is that
 22 Ms. Deluca first described the individuals
 23 to Ms. Curulli. And Ms. Curulli then took
 24 out her wedding album, showed her
 25 individuals she thought fit the description.

1 R. LA TOUR, ESQ.
 2 And Ms. Deluca identified Mr. Tortora. And
 3 after that she called the police. That is
 4 my understanding based on my conversations.
 5 Q. Did you ever get a copy of these
 6 wedding photographs?
 7 A. No.
 8 Q. Did you ever ask for them?
 9 A. No.
 10 Q. There were no officers present
 11 when Ms. Curulli was asking Ms. Deluca these
 12 questions?
 13 A. Not to my understanding. That
 14 this happened before police were even
 15 notified about the incident.
 16 Q. When the police were notified, do
 17 you know if Ms. Curulli called in and said
 18 "we have identified somebody" or something
 19 else?
 20 A. I don't recall.
 21 MS. BROWN: Objection.
 22 A. I don't recall.
 23 Q. Do you know if the officers
 24 brought a photo-array to the scene to have
 25 Ms. Deluca view?

1 R. LA TOUR, ESQ.
 2 A. I don't know if that happened.
 3 Q. That would be brady material, why?
 4 MS. BROWN: Objection. What would
 5 be brady material? Why what?
 6 Q. Your testimony now is that it was
 7 the photo-array that was done for lack of a
 8 better phrase that was done by Ms. Curulli
 9 that was the substance of the brady,
 10 correct?
 11 A. No.
 12 MS. BROWN: Objection to the fact
 13 that you are characterizing that as a
 14 photo-array. But go ahead.
 15 THE WITNESS: That is what I was
 16 going to say.
 17 A. I was going to say that a
 18 photo-array refers to an actual official
 19 police procedure where they normally --
 20 right -- they go through a certain procedure
 21 to generate photographs of an individual
 22 that looks similar to the target individual.
 23 They place them randomly, right, out of six,
 24 and they ask somebody if that person is
 25 present in the photo-array.

1 R. LA TOUR, ESQ.
 2 That is not what Ms. Curulli did
 3 to my understanding. My understanding is,
 4 Ms. Curulli opened a photograph, a photo
 5 album, showed her some people in the photo
 6 album. And asked if Ms. Deluca recognized
 7 anybody. Or -- I mean, I don't know exactly
 8 how she showed her the photo album, but I
 9 would not characterize that as a
 10 photo-array.
 11 Q. Why was that brady?
 12 A. I am not the one who wrote down
 13 that that was the brady that should be
 14 revealed to defense counsel.
 15 Q. So as you sit here today, are you
 16 confident that, what we are discussing now,
 17 that Ms. Curulli showed photograph to
 18 Ms. Deluca before officers came is the brady
 19 material that is referenced in the file or
 20 you are not sure?
 21 MS. GRADY: Objection.
 22 MS. BROWN: Off the record.
 23 (Whereupon, an off-the-record
 24 discussion was held.)
 25 MR. ZELMAN: Back on the record.

1 R. LA TOUR, ESQ.
 2 MS. GRADY: Objection.
 3 Privileged.
 4 MR. ZELMAN: Can you read back the
 5 question.
 6 (Whereupon, the referred-to
 7 question and was read back by the
 8 reporter.)
 9 MS. GRADY: That is privileged
 10 information.
 11 Q. You indicated that there is brady
 12 material that was put on the record,
 13 correct?
 14 A. Yes.
 15 MS. BROWN: Objection.
 16 Q. What Defense Counsel asked you
 17 about a minute ago -- you said that when you
 18 testified earlier, you said that you thought
 19 brady material had to do with the lineup,
 20 correct?
 21 A. That's correct.
 22 Q. When Defense Counsel asked you
 23 about it, you said you think the brady
 24 material had to do with the photographs
 25 being shown by Ms. Curulli?

1 R. LA TOUR, ESQ.
 2 MS. BROWN: Objection.
 3 Q. That's correct. I don't know if
 4 she asked me about brady material. I
 5 believe what Ms. Brown, if I am remembering
 6 correctly just asked me about the pictures.
 7 I don't know that she asked me about
 8 anything in relation to whether or not that
 9 was brady material.
 10 Q. All right. As you sit here today,
 11 with respect to the brady material as noted
 12 in the file and it says it was put on the
 13 record?
 14 A. Yes.
 15 Q. Do you know what that is referring
 16 to?
 17 A. Well, I testified before that I
 18 believe it had to do with the identification
 19 procedure.
 20 Q. Do you specifically know if it had
 21 to go with the lineup or the photographs
 22 shown to Ms. Deluca?
 23 MS. GRADY: Do you know what is
 24 the question?
 25 A. I believe that it had to do with

1 R. LA TOUR, ESQ.
 2 MS. BROWN: No further questions.
 3 MR. ZELMAN: Nothing further.
 4 Thank you.
 5 MS. GRADY: Thank you.
 6 (Whereupon, at 12:18 P.M., the
 7 Examination of this witness was
 8 concluded.)
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1 R. LA TOUR, ESQ.
 2 the fact that she was -- that Ms. Deluca was
 3 shown photographs of individuals by
 4 Ms. Curulli before she did the lineup
 5 identification procedure.
 6 Q. Okay. And you indicated
 7 earlier it was not your decision to make
 8 that brady?
 9 A. That's correct.
 10 MR. ZELMAN: Okay, understood. I
 11 have nothing further.
 12 CONTINUED EXAMINATION BY
 13 MS. BROWN:
 14 Q. What is your understanding of what
 15 brady material is?
 16 A. My understanding of brady material
 17 is that it is exculpatory information. That
 18 is my strict sense of brady material. Now,
 19 that if you are asking for my understanding
 20 of brady, sometimes I am broader in terms of
 21 what I turn over. Even if it is not
 22 technically brady material I might turn it
 23 over anyway, because I believe it is best
 24 practice to do so. Even though technically
 25 it may not be or would not be.

1 R. LA TOUR, ESQ.
 2 DECLARATION
 3
 4 I hereby certify that having been first
 5 duly sworn to testify to the truth, I gave
 6 the above testimony.
 7
 8 I FURTHER CERTIFY that the foregoing
 9 transcript is a true and correct transcript
 10 of the testimony given by me at the time and
 11 place specified hereinbefore.
 12
 13
 14
 15 _____ RHIANNON LA TOUR, ESQ.
 16
 17
 18 Subscribed and sworn to before me
 19 this _____ day of _____ 20 _____.
 20
 21
 22 NOTARY PUBLIC
 23
 24
 25

1 R. LA TOUR, ESQ.
 2 EXHIBITS
 3

4 PLAINTIFF'S EXHIBITS:

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 6 EXHIBIT EXHIBIT
 7 NUMBER DESCRIPTION PAGE
 8 1 City's Def-73/Bucksheet 20
 9 2 City's Def-71 34
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 13 (Exhibits retained by Counsel.)

14 I N D E X

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 21
 22 INFORMATION AND/OR DOCUMENTS REQUESTED
 23 INFORMATION AND/OR DOCUMENTS PAGE
 24 (None)

25

1 R. LA TOUR, ESQ.
 2 C E R T I F I C A T E
 3

4 STATE OF NEW YORK)

: SS.:

5 COUNTY OF KINGS)

6
 7 I, GERMILA DONALD, a Notary Public for
 8 and within the State of New York, do hereby
 9 certify:

10 That the witness whose examination is
 11 hereinbefore set forth was duly sworn and
 12 that such examination is a true record of
 13 the testimony given by that witness.

14 I further certify that I am not related
 15 to any of the parties to this action by
 16 blood or by marriage and that I am in no way
 17 interested in the outcome of this matter.

18 IN WITNESS WHEREOF, I have hereunto set
 19 my hand this 30th day of November 2017.

20

21

22

GERMILA DONALD

23

24

25

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